

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF TEXAS  
3 WACO DIVISION

3 MIDAS GREEN TECHNOLOGIES,) Docket No. WA 22-CA-050 ADA  
4 LLC )  
5 vs. ) Waco, Texas  
6 RHODIUM ENTERPRISES, )  
7 INC, ET AL ) November 7, 2022

8 TRANSCRIPT OF DISCOVERY HEARING  
9 BEFORE THE HONORABLE DEREK T. GILLILAND

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1 (Proceedings commence at 10:05 a.m.)

2 THE COURT: All right. Good morning, everybody.

3 We're here for a discovery dispute and I'm going  
4 to start by asking Ms. Copp to call the case.

5 THE CLERK: Yes, your Honor.

6 Calling Case No. WA 22-CV-50, styled, Midas Green  
7 Technologies, LLC vs. Rhodium Enterprises, Incorporated,  
8 et al, called for a discovery hearing.

9 THE COURT: All right. Could I have  
10 announcements starting with the plaintiff.

11 MR. SMITH: Yes. For the plaintiff, your Honor,  
12 Michael Smith, Henry Pogorzelski and Courtney Neufeld, and  
13 we're ready to proceed.

14 THE COURT: All right. Very good.

15 And for the defendant.

16 MS. LI: Good morning, your Honor.

17 Kat Li of Kirkland & Ellis on behalf of the  
18 defendants. With me is Gianni Cutri and Ben Herbert. And  
19 today, Mr. Cutri will be doing the primary speaking.  
20 We're ready.

21 THE COURT: All right. Very good. Well, I -- so  
22 I looked over the parties' chart and -- you know, the  
23 discovery dispute chart that they submitted, and just to  
24 make sure I've got myself oriented properly, it looks like  
25 it's an issue regarding whether plaintiff has properly

1 charted all of the products that plaintiff contends  
2 practice the patent for purposes of a lost profit claim.  
3 Am I understanding that right?

4 MR. CUTRI: I think, your Honor, that it's for  
5 multiple purposes, but in essence, your Honor is right.  
6 Plaintiff has charted two products or three, depending on  
7 the way they count, out of the 11 that they contend  
8 practice the invention, and they contend that those  
9 products -- they will rely on these products to show  
10 secondary considerations, in particular, commercial  
11 success. That's an issue they bear the burden on. And  
12 that they plan to use those products for lost profits,  
13 which is another issue that they bear the burden on.

14 We've asked them if that's the case and they've  
15 confirmed that yes, they do plan to rely on those other  
16 products, and do plan to tell the jury that they -- that  
17 their asserted claims are practiced by those products.

18 THE COURT: Okay.

19 MR. POGORZELSKI: Your Honor --

20 THE COURT: Yeah. Go ahead, Mr. Pogorzelski.

21 MR. POGORZELSKI: Your Honor, I think Mr. Cutri  
22 is a little going overboard. We are relatively early in  
23 the case and the issue of whether we will -- whether we  
24 will have a lost profits claim and the sorts of secondary  
25 factors that we'll assert is premature right now. We're

1 early in the case and what we have here is, you know, we  
2 have provided certain charts, and the question before the  
3 Court, I think, is whether the representative charts are  
4 sufficient or whether we have to chart every single  
5 product that we contend is made according to our patent.

6 THE COURT: Okay. Yeah. And the thing that was  
7 throwing me off is when I first looked at the chart, I had  
8 assumed we were talking about infringement contentions;  
9 but then, after reading through it, I realized we were  
10 talking about charts created by the plaintiff on the  
11 plaintiff's own products. So that's what struck me as a  
12 somewhat unusual situation.

13 MR. CUTRI: It is, your Honor. And, your Honor,  
14 could I -- well, I'm happy to address the motion in  
15 whichever fashion you'd like. I could respond to what Mr.  
16 Pogorzelski said and maybe make my affirmative case if  
17 that works for your Honor. But I'll proceed in whatever  
18 fashion you prefer.

19 THE COURT: Yeah, let's do that. Let me -- I'll  
20 start by telling you that in general, you know, the Court  
21 allows -- at least go in the typical fashion where the  
22 plaintiff is charting the infringing products and  
23 infringement contentions. That's what struck me as  
24 unusual when I read the disputed or the interrogatory at  
25 issue. I was thinking, well, that's the reason for

1 preliminary infringement contentions. And then, I  
2 realized, well, we're not talking about infringement  
3 contentions, so it's a little bit different. But I will  
4 say that for preliminary infringement contentions, we  
5 typically allow parties to chart representative products  
6 as opposed to having to chart every single product.

7           So with that kind of general practice in mind,  
8 Mr. Cutri, if you want to go ahead and argue the  
9 defendants' position or your position on this, please  
10 proceed.

11           MR. CUTRI: Absolutely, your Honor. And thank  
12 you for taking the time with this issue. It's an issue of  
13 significant importance for us as the defendant.

14           So in this case, the plaintiff contends that 11  
15 of its products practice the asserted claims. They  
16 confirm that they want to tell the jury that all 11 of  
17 these products practice the asserted claims and that  
18 they're going to use those products to demonstrate lost  
19 profits, which is an issue they bear the burden on. And  
20 for -- to try to establish that their patent, their  
21 invention was commercially successful, another issue they  
22 bear the burden on.

23           We want to challenge that contention, Judge, and  
24 that's really why we need them to supply what they've  
25 already supplied for some of the products, for all of the

1 products but, in more particularly, on an  
2 element-by-element basis, a claim chart for all 11  
3 products. We've supplied cases and the case law is  
4 unequivocal that when a plaintiff makes a broad  
5 contention, they're required to supply an  
6 element-by-element claim chart and that makes sense. This  
7 is not a scenario where the plaintiff can just assert  
8 their claim chart is, quote, representative because we  
9 dispute that the remaining products practice the claims.  
10 And it's only the plaintiff who can make out that case.

11           If you were to allow a plaintiff to say, well,  
12 this is representative, what we believe is happening here  
13 is, the plaintiff cannot make out its case that the other  
14 products practice these claims. And they're trying to use  
15 the representative concept as a way to avoid having to  
16 make their proofs. And so, what we are left with is a  
17 situation where the plaintiff wants to just say, well,  
18 we'll just tell you how two of the products work and you  
19 have to take our word for it that we have evidence and we  
20 could supply you with other claim charts, but we're not  
21 going to do that.

22           To be clear, the plaintiff has told us they have  
23 already figured out their positions on these other  
24 products. So this is not a situation where there's an  
25 undue burden here. They've already told us of all the

1 products we made, these are the 11 that practice the  
2 asserted claims. And this is not undue burden. The  
3 reason that, you know, the representative concept doesn't  
4 work here is representative when a plaintiff makes a  
5 representative assertion in the context of infringement,  
6 the plaintiff says all of my entire case rises and falls  
7 with these products. So if you prove that these don't  
8 infringe, then none of the products infringe.

9           Here, what the plaintiff has done is, they've  
10 done for two or -- the two products they have charted,  
11 they haven't even charted all of the asserted claims,  
12 that's number one. And then, number two, we've looked and  
13 we don't believe that they could actually establish that  
14 certain of the claim elements, many of the claim elements  
15 are found in these other products. And we've actually  
16 asked them. We've said, well, if you're saying  
17 representative, are you willing to agree right now that  
18 those two products that you've charted, one, for the  
19 claims you haven't charted, you'll never try to say that  
20 those other products practice them, and they said no, no.  
21 We are going to later in the case show up with a different  
22 contention.

23           So we straightaway said this is not  
24 representative in the sense that the plaintiff typically  
25 says representative. And then, two, we said, well, were



1 the products in claims you have charted? If we establish  
2 that those products don't practice the claims, will you  
3 agree that none of the products practice the claims? And  
4 this was in a meet-and-confer I had two weeks ago, they  
5 said absolutely not. We are going to reserve our right to  
6 show up later with new contentions as to those other  
7 products.

8           And so, the reason representative doesn't work  
9 here is, it doesn't work in two different -- in both --  
10 either direction. First, it's not representative because  
11 the plaintiff, we believe, can't make out their case as to  
12 the other nine products. And then, additionally, the  
13 plaintiff is also saying, and for the ones we have made  
14 out some claim charts for, we will not agree that our case  
15 rises and falls. But to be clear, even if they were to  
16 make that agreement, that would be insufficient because we  
17 need to see the gaps -- we need to see how they are  
18 filling in the gaps in the claim charts that we know  
19 exist.

20           Again, the plaintiff -- now for the plaintiff's  
21 point -- from the plaintiff's perspective, this is  
22 relatively simple. They said they've done the work. They  
23 say that have charted the products internally. They say  
24 that they don't need any discovery from anyone else. They  
25 don't need, you know, us to tell them how their products

1 work. They don't need us to tell them how they're reading  
2 the claims on their own products. This is a scenario  
3 where there's zero burden, right? And a representative  
4 stipulation is usually a case where there's a lot of  
5 effort involved.

6 But if you look at the plaintiff's submission,  
7 they say straightaway, the charts that we're asking for,  
8 quote, will duplicate the charts already provided. And  
9 we're talking about 11 products and two patents and a  
10 number of claims. This is not thousands of products or  
11 hundreds of claims. This is a small amount of work that  
12 the plaintiff, again, has done for some of the products  
13 and some of the claims and has shared with us those  
14 positions, and they say they have done it for the others.

15 So what we believe is appropriate here, your  
16 Honor, is to just say, look, for what you've done for some  
17 of them, the defendant disputes that, disputes that  
18 they're representative. The defendant believes that there  
19 are elements that aren't found. That's their prerogative.  
20 Since you bear the burden when it comes to a discovery  
21 request, you have to turn over the information. If you  
22 say it's there and if you're saying it's duplicative and  
23 we would just be able to -- we, the plaintiff, have  
24 already done the work, then we just want them to turn over  
25 to us the work that they say they've already done.

1           And so, you know, your Honor, I could address  
2 they have a point about experts, but I don't think this is  
3 a situation where they need an expert and they've conceded  
4 as much. This is a situation where they've already  
5 created charts and they didn't need an expert to create  
6 the charts. They've already concluded that the other  
7 products practice the claims. They didn't need an expert  
8 for that.

9           So at the end of the day, the plaintiff should  
10 not be able to get up and say all of these products  
11 practice the invention but then, refuse to give us in  
12 discovery the evidence that backs that up. And so, we  
13 would ask the Court to tell the plaintiff, give them your  
14 products, your claims, give them the contentions. If  
15 you're right and the contentions are correct, then you  
16 haven't lost anything since you've already done the  
17 analysis.

18           THE COURT: Okay. Let me hear from Mr.  
19 Pogorzelski.

20           MR. POGORZELSKI: Yes, your Honor. Thank you.

21           First off, we haven't charted these products  
22 already. And so, it's not correct to say that there's no  
23 undue burden. Your Honor, what I would say first, in  
24 summary, this is a proportionality case. And if I may  
25 share my screen.

1 THE COURT: Certainly.

2 MR. POGORZELSKI: Would that be acceptable?

3 THE COURT: That'd be fine. Yeah.

4 MR. POGORZELSKI: Okay. So I want to go to first  
5 principles because that's important. And I hope that you  
6 can see a chart that has rule -- has Rule 26 in front of  
7 you.

8 THE COURT: I can.

9 MR. POGORZELSKI: Okay. Great.

10 So the standard is relevant and proportional to  
11 the needs of the case. And so, I would say, your Honor,  
12 we submit you have to look at the proportionality  
13 standards. And so, the Court is correct to say, this is  
14 an unusual case. We're not arguing about infringement  
15 contentions. We're not arguing about invalidity  
16 contentions. We're arguing about whether the defendant  
17 can make the plaintiff go through the trouble and the  
18 expense of charting all of the products that it currently  
19 says that it will -- that are practicing its claims.

20 Now, defendant is saying that okay, well, it's  
21 relevant to the issue of lost profits and it's relevant to  
22 the issue of secondary factors. And what I would submit,  
23 your Honor, is that those issues are not key issues at  
24 this point in the case. If charting -- if the plaintiffs  
25 would always have to chart its products, then that should

1 be in the local rules. That should be in the local patent  
2 rules, but it's not.

3           So if I may, I want to share the case that we're  
4 relying upon because it is highly relevant and that's the  
5 Stratus case that we've referenced. So Stratus is a  
6 discovery dispute, but it is important because it explains  
7 -- it explains that in certain instances when parties are  
8 required or when parties are asked to do charting, you put  
9 it in the expert report. So now, in this case, we've got  
10 secondary factors and then, we've got this issue of lost  
11 profits, and we submit that those are the quintessential  
12 issues that are put into expert reports.

13           So now, Stratus was this case where the court was  
14 counting interrogatories. People didn't want to copy  
15 interrogatories. But what I want to highlight is what the  
16 facts of this case were. In this case, the plaintiff was  
17 asked to provide invalidity -- I'm sorry, validity charts  
18 and plaintiffs normally don't provide validity charts.  
19 And that's what this Interrogatory No. 12 is. And the  
20 Court said, oh, by the way, for interrogatories that are  
21 typically answered in expert reports, the Court's usual  
22 practice is to allow a party to defer answering the  
23 interrogatory until the corresponding expert report is  
24 due. Interrogatory No. 12 is such an interrogatory.

25           We respectfully submit that defendants'

1 Interrogatory No. 4 in this case is also such an  
2 interrogatory. So going back to the factors, this is not  
3 a case where these charts are of key importance. They're  
4 really -- this is something that's going to be addressed  
5 long down the case. Now, looking at the other factors,  
6 amount in controversy, I think that's neutral. The  
7 parties' relative access to the information.

8 Now, we've provided or we'll shortly provide  
9 discovery for all of these 11 products. Defendants are  
10 fully capable of looking at these products and determining  
11 their position as to whether or not they are made  
12 according to the patent.

13 Next issue is party's resources. Just to be  
14 clear, Plaintiff Midas is a small startup in Austin,  
15 Texas. We have about 10 employees in Austin. We have  
16 maybe another five to seven in a back office in Mexico.  
17 Defendants in this case has -- according to their latest  
18 SEC filing is valued at \$650 million and has 96 employees  
19 and three independent contractors. So in terms of  
20 resources, yeah, I'm sure defendants would love to  
21 generate additional busywork for this firm for my client  
22 to have to deal with. Our position is, this factor also  
23 favors denial.

24 Now, next issue, the importance of the discovery  
25 in resolving the issues. This isn't something where we're

1 withholding charts. If I have the charts, I would hand  
2 them over. Now, in the case of the three charts we did,  
3 these charts were generated towards the end of a prior  
4 case, so we handed them over. But that's not the same as  
5 admitting their relevance. It's not the same as admitting  
6 that this discovery is proportional to the needs of the  
7 case.

8           And then, finally, whether the burden and expense  
9 of the proposed discovery outweighs its likely benefit.  
10 So if Mr. Cutri, if defendants want to argue that, hey,  
11 we're just wrong, none of our products are made according  
12 to our patent, they don't need discovery from us. They  
13 have their own experts and this is simple mechanical  
14 technology. This is not like rocket science.

15           Defendants don't need us to generate 11 more  
16 charts in order to prove up our theory that our products  
17 are made according to our patent. So in sum, this is a  
18 proportionality case. Defendants are trying to generate  
19 extra work for us and there's no real benefit.

20           THE COURT: Okay. Mr. Pogorzelski, is plaintiff  
21 -- setting the chart aside, is plaintiff providing  
22 discovery only for the products that were charted, or will  
23 they be providing discovery on all of plaintiff's  
24 products?

25           MR. POGORZELSKI: Your Honor, we will -- if we

1 haven't done it already, we will be producing discovery on  
2 all of these products. We're not withholding anything.  
3 And as a backdrop, your Honor, there was a prior  
4 litigation between Midas and a -- and an affiliated  
5 company of the defendants' and during that litigation, we  
6 produced essentially all the documents we had for our  
7 products made according to the patent.

8           In accordance with an agreement we reached, all  
9 of those documents from the prior case have already been  
10 produced. So, your Honor, I'm not representing that they  
11 have every CAD file for every product made according to  
12 the patent, but we're not withholding it and they will get  
13 it if they don't have it already.

14           THE COURT: Okay. All right. So here's what I'm  
15 going to do and it's how we would -- how I would normally  
16 address this if this was involving plaintiff's  
17 infringement contentions. But the Court typically permits  
18 infringement contentions in the form of representative  
19 products. For example, if there are 100 products accused  
20 and the plaintiff wants to just chart one product under  
21 the allegation that the rest -- that that one is  
22 representative of the others, that's something that we  
23 typically permit.

24           So I'm going to permit plaintiffs to do that in  
25 this case where they're talking about their own product.



1 Since they are providing discovery on it, Mr. Cutri,  
2 defendant will be free to undercut and demonstrate and  
3 analyze how some of the discovery might show that, in  
4 fact, the second or third products are different from the  
5 one that was charted and, therefore, the chart's not  
6 representative.

7           Now, I will tell plaintiff that if you do intend  
8 -- much like infringement contentions, if you do intend to  
9 rely on the plaintiff's products practicing the patent,  
10 different claim element -- or claims of the patents, then  
11 you're going to -- for the representative products, I  
12 think it's incumbent on you to provide charts for each of  
13 the claims that you will want to later contend are  
14 practiced by your patent.

15           So if your expert's going to provide a report at  
16 some point and say that plaintiff's products practice  
17 claim 1 and claim 1's the one you've already charted, then  
18 I think you're fine. But if your expert wants to say the  
19 plaintiff's products practice claims 1, 3 and 7, then in  
20 response to Interrogatory 4, I think it's -- then you're  
21 going to need to provide not necessarily infringement  
22 contentions but the plaintiff's equivalent to show that  
23 this is how we contend our representative product  
24 practices claims 1, 3 and 7, or whatever ones you're going  
25 to contend it practices.

1 But I'm not going to order you to provide charts  
2 on all 10 products, but will order that you provide charts  
3 on every claim that your -- you contend your product  
4 practices. And then --

5 MR. POGORZELSKI: So every asserted claim --

6 THE COURT: Pardon?

7 MR. POGORZELSKI: I'm sorry. So, your Honor,  
8 you're saying every asserted claim that we contend, we'll  
9 have to provide a representative chart?

10 THE COURT: Correct. That you contend. So if  
11 you only want to contend that the products practice one of  
12 the claims and you're happy with that contention because  
13 it gets you where you need to be, then you'll only need to  
14 provide a chart on that one claim. But if you want to be  
15 able to have your expert say not only does it practice  
16 claim 1, but it practices these other claims, as well,  
17 then you need to provide charts on those other claims.

18 You're essentially going to be cabined or limited  
19 to what you've charted when your expert testifies as far  
20 as the claims practiced by plaintiff's products. Does  
21 that make sense?

22 MR. POGORZELSKI: Yes, your Honor.

23 THE COURT: Okay. And again, if it's going to be  
24 plaintiff's contention that the products charted are  
25 representative of all of plaintiff's products, as long as

1 that contention's clear from the interrogatory response,  
2 then the chart's sufficient, especially in light of the  
3 fact that plaintiff is still going to provide complete  
4 discovery so that if defendant wants to come in later and  
5 say, look -- going with the commercial success argument  
6 says, look, the commercial success is product No. 2 and  
7 it's not at all like product No. 1 and we could show you  
8 why, then you'll have the discovery necessary to do that  
9 in response.

10 MR. CUTRI: Your Honor, thank you. And I just  
11 wanted to clarify on that -- in that scenario, if we say,  
12 here's product 5 that was uncharted by the plaintiff and  
13 we say product 5 is -- does not practice the invention and  
14 our expert gets up and says it's missing, you know, the  
15 control facility and we say that product was very  
16 commercially successful and, therefore, there's no  
17 commercial success. Am I to understand your ruling that  
18 the plaintiff cannot at that point say, oh, wait a second,  
19 here's how product 5 practices.

20 In other words, consistent with what you said,  
21 the plaintiff can -- the plaintiff's expert can only  
22 testify about the products that they've charted. Because  
23 the reason I raise that, your Honor, is because I think a  
24 great number of these, there's going to be sort of an  
25 absence of proof-type argument, and I don't want to be

1 surprised at trial if -- with the plaintiff coming back  
2 and saying, well, you're right. Now that we realize  
3 there's an absence of proof, we're going to show up with  
4 our expert and expert's going to start talking about  
5 product No. 5.

6           So that's -- and we're happy to tell the  
7 plaintiff, hey, these are the problems, but we just want  
8 to make sure that since the plaintiff wants a  
9 representative case, the plaintiff's going to get a  
10 representative case, which means they don't get the  
11 ability later to come in and say, oh, wait a second, now  
12 that we understand our proof problem, we're going to come  
13 in with a new contention as to product 5, for example.

14           THE COURT: Okay. And I think I follow you. The  
15 difficulty is that it's -- at this early of the stage,  
16 it's kind of hard to really define all of the boundaries.  
17 So if plaintiff wants to say that products 1 and 2 have  
18 been charted and their expert says, look, 1 and 2 have  
19 been charted and they're representative and they practice  
20 all the claim elements, and then, defendants' expert comes  
21 in and says, well, no, really, the commercial success is  
22 on this uncharted product and it does something completely  
23 different and here's why. Plaintiff's expert obviously is  
24 free to go back and say no, no, I disagree. I think it  
25 does work the same way as the representative product as I

1 stated before and here's why. And then, you've just got  
2 essentially a fact question that the jury needs to sort  
3 out.

4           However, if there's some unique aspect of a  
5 product -- and this is all somewhat advisory at this stage  
6 of the case, but I'm going to pick a claim element that  
7 hopefully is not in this case as an example. But say the  
8 plaintiff's expert has charted a product as representative  
9 and a claim element requires a rod, and one of the  
10 subsidiary uncharted products, say, uses a tube and  
11 defendants' expert says it's not -- that's not  
12 representative because it's not a rod, it's a tube. And  
13 plaintiff wants to come back and somehow change its  
14 allegations to say, well, rods and tubes are covered by  
15 this claim element. That's going to be not  
16 representative, I would think, though, you know, with  
17 patent lawyers, I could see that also becoming a claim  
18 construction issue as to whether a tube can be a rod.

19           But anyway, that's about as good as I can do at  
20 this stage without expert reports because the essence of  
21 it is, whatever makes it into plaintiff's expert report  
22 has to be supported by evidence and statements made during  
23 discovery. And so, if expert -- I mean, if plaintiff  
24 wants their expert to say, you know, I think all the  
25 products are representative and I think they practice

1 claims 1, 3 and 5, then we should be able to look back at  
2 these -- this interrogatory response and plaintiff's  
3 contention as to how that product practice 1, 3 and 5.  
4 And then, if defendant expert wants to say that it doesn't  
5 for some specific reason, it's likely that that will wind  
6 up being a fact dispute but if -- you know, if plaintiff  
7 wants to come in later and say, well, the chart's  
8 representative of these nine products and No. 10 is --  
9 practices the patent in this completely different way that  
10 we didn't tell the defendant about during discovery, that  
11 will be a problem.

12 MR. CUTRI: Yeah. Yeah, your Honor. So that's  
13 helpful. We will work with the plaintiff obviously when  
14 we get the charts. And I assume it's okay with the Court  
15 if one of these issues is ripe now, for example, like if  
16 we could identify them now, we should just work with the  
17 plaintiff and try to work that out and raise it with you  
18 if that's something we can't quite figure out.

19 THE COURT: Yeah. That's fine. And what I'll do  
20 is enter an order -- and I'll ask the parties to just  
21 jointly submit an order. But what I'm going to order is  
22 sort of a granting in part and denying in part. I'm going  
23 to grant defendants' request to the extent that plaintiff  
24 needs to chart all claims that it believes its  
25 representative products practice. However, I'm going to

1 deny the request for plaintiff to provide charts for every  
2 product if it's plaintiff's contention that the charted  
3 products are representative of all the other products.

4 And of course, plaintiff will still provide discovery on  
5 all the products. Not just the ones charted.

6 MR. CUTRI: Thank you, your Honor.

7 THE COURT: Okay. Is there anything else on  
8 behalf of defendant today?

9 MR. CUTRI: No, your Honor. Thank you.

10 THE COURT: Okay. Mr. Pogorzelski, anything on  
11 behalf of plaintiff?

12 MR. POGORZELSKI: No, your Honor.

13 THE COURT: All right.

14 MR. CUTRI: Actually, your Honor, there is one  
15 thing. We are working with the plaintiff to get  
16 conception and reduction to practice evidence, they've  
17 agreed to, I think, provide it by today. If we have -- we  
18 have an agreement with them to get that material today.  
19 But if that doesn't come to fruition, we'll work with  
20 them; if not, you may be seeing us in the near term. We  
21 actually had a entire chart ready to be submitted on that  
22 issue, but we were able to work it out with the  
23 plaintiffs. So we'll look forward to their production,  
24 but if not, we'll be with you relatively soon.

25 THE COURT: Okay. And kind of along those lines,

1 I just want to make a note for everybody involved that  
2 both sides have exceptional local counsel in Mr. Smith and  
3 Ms. Li, and I'm sure they'll encourage y'all and help  
4 y'all work together. But if you can't work something out,  
5 that's what I'm here for.

6 MR. CUTRI: Thank you, your Honor.

7 MR. POGORZELSKI: Thank you, your Honor.

8 THE COURT: So with that, we'll be adjourned.

9 MR. CUTRI: Thank you.

10 MR. SMITH: Thank you, your Honor.

11 (Proceedings conclude at 10:34 a.m.)  
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I, LILY I. REZNIK, DO HEREBY CERTIFY THAT THE FOREGOING  
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ON THIS 9th DAY OF NOVEMBER, 2022.

*Lily Iva Reznik*  
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